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Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1852~~ ~~1961~~ 70-307

BECHTEL CORPORATION,

Petitioner,

vs.

THE STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

BECHTEL CORPORATION,

Petitioner,

vs.

THE STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY

The petitioner Bechtel Corporation respectfully prays that a writ of certiorari issue to review the order of the Superior Court of New Jersey, Law Division, Middlesex County, entered in this proceeding on December 8, 1969.

Opinion Below

The unreported order of the Superior Court of New Jersey, Law Division, Middlesex County, appears in the Appendix hereto.

Jurisdiction

The order of the Superior Court of New Jersey was entered on December 8, 1969. A timely application for

leave to appeal to the Superior Court of New Jersey, Appellate Division, was denied on January 6, 1970. A timely application for leave to appeal to the Supreme Court of New Jersey was filed. All proceedings were stayed by order of the Supreme Court of New Jersey on April 15, 1970. Thereafter, on March 22, 1971, leave to appeal to the Supreme Court of New Jersey was denied by that Court, and this petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

Questions Presented

This petition presents the following three questions:

1. Whether the order of the Superior Court of New Jersey, Law Division, Middlesex County, dated December 8, 1969, is reviewable by this Court under 28 U.S.C. §1257(3)?

2. Whether this Court's opinion in *Bartkus* v. *Illinois*, 359 U. S. 121 (1959), is still viable?

3. Whether this Court's opinion in *Bartkus* v. *Illinois*, 359 U. S. 121 (1959), authorizes successive federal and state prosecutions for one violation of a state statute which has been assimilated into federal law?

Constitutional and Statutory Provisions Involved

U. S. Const., Amend. V:

> "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb. . . ."

U. S. Const., Amend. XIV:

". . . No state shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

United States Code, Title 28, Section 1257:

"Final Judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

• • •

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

United States Code, Title 18, Section 1952:

"(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

• • •

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

"(b) As used in this section 'unlawful activity' means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States."

New Jersey Statutes 2A:93-6:

"Any person who directly or indirectly gives or receives, offers to give or receive, or promises to give or receive any money, real estate, service or thing of value as a bribe, present or reward to obtain, secure or procure any work, service, license, permission, approval or disapproval, or any other act or thing connected with or appertaining to any office or department of the government of the state or of any county, municipality or other political subdivision thereof, or of any public authority, is guilty of a misdemeanor."

Statement of the Case

During the years 1963 and 1964 petitioner Bechtel Corporation, a Delaware corporation with principal offices in California, engineered and constructed portions of an oil pipeline in New Jersey under a contract with Colonial Pipeline Company, owner and operator of the pipeline. During the course of construction, public officials of the Township of Woodbridge, New Jersey, demanded of Colonial and thereafter received sums of money, in return for which easement and building permits for the pipeline and related facilities were issued. Bechtel employees, acting as a conduit for Colonial, assisted in one of the payments.

In 1967 petitioner Bechtel and nine others were indicted by the United States for violations of 18 U.S.C. §1952, allegedly having committed bribery in violation of New Jersey Statutes 2A:93-6 while using interstate facilities. Petitioner Bechtel's co-defendants included Colonial and two of its officers, other construction companies, and two public officials of the Township of Woodbridge. A trial in the United States District Court for the District of New Jersey commenced in November, 1968, and on January 23, 1969, petitioner Bechtel and the other defendants were found guilty by a jury. Petitioner Bechtel was subsequently fined $20,000.

In February, 1969, petitioner Bechtel was indicted, with all but one of its federal co-defendants, by the State of New Jersey for violation of N.J.S. 2A:93-6 by the same acts charged in the federal indictment.[1] Petitioner Bechtel and most of its co-defendants moved the Superior Court of New Jersey, Law Division, Middlesex County, to dismiss the New Jersey indictment on the federal constitutional ground of double jeopardy, among other grounds. The motions were timely under state practice and would, if granted, have terminated the New Jersey proceeding as to petitioner Bechtel. These motions were denied by the Superior Court of New Jersey, Law Division, Middlesex County, in an order dated December 8, 1969.

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[1] Petitioner Bechtel was named in two counts of the federal indictment. One charged participation in a conspiracy to make three payments to Woodbridge officials and the other charged participation in the first of the three payments. The state indictment charges petitioner Bechtel in four counts, including the conspiracy and first payment mentioned above and, also, the second and third payments of the conspiracy. If petitioner Bechtel's double jeopardy claim is established, it will constitute a total bar to the state proceeding. See, *Ashe* v. *Swenson*, 397 U. S. 436 (1970).

Petitioner Bechtel's applications for leave to appeal that order were denied by the Appellate Division of the Superior Court of New Jersey and by the Supreme Court of New Jersey. No further review of the December 8, 1969, order of the Superior Court is available to petitioner Bechtel in the State of New Jersey until after a trial and conviction on the New Jersey indictment.

Petitioner Bechtel appealed its federal conviction to the United States Court of Appeals for the Third Circuit. A panel of the Third Circuit ordered petitioner Bechtel's federal conviction reversed because of improper selection of the federal grand jury. *United States* v. *Zirpolo et al.*, 8 Crim. L. Rptr. 2444 (February 18, 1971). The United States made a timely application for a rehearing en banc. The Court of Appeals has not yet issued its mandate in that proceeding.

REASONS FOR GRANTING THE PETITION

1. Unless the order of the Superior Court of New Jersey satisfies the finality requirement of 28 U.S.C. §1257, petitioner Bechtel will be irretrievably deprived of its right not to be placed twice in jeopardy for the same offense.

The respondent State of New Jersey is prohibited by the Constitution of the United States from placing petitioner Bechtel twice in jeopardy for the same offense. *Benton* v. *Maryland*, 395 U. S. 784 (1969). The prohibition does not merely prevent the imposition of two punishments for the same offense, but forbids subjection of petitioner Bechtel to the embarrassment, expense, and insecurity of a second prosecution. *Downun* v. *United States*, 372 U. S. 734, 736 (1963); *United States* v. *Coke*, 404 F. 2d 836, 839 (2d Cir. 1968).

The avoidance of a second jeopardy, no matter the outcome, is the federal constitutional right Bechtel has sought to enforce in the Superior Court of New Jersey, Law Division, Middlesex County. The order of the Superior Court of New Jersey of December 8, 1969, rejected petitioner Bechtel's claim of right under the Constitution of the United States. Review of the merits of that order was denied by higher state courts at two stages.[2]

The jurisdiction of this Court rests on the language of 28 U.S.C. §1257. The requirements of §1257 have been met by petitioner Bechtel. Bechtel's claim of right under the Constitution of the United States was denied by the highest New Jersey Court in which a decision could be had. The order of the Superior Court of New Jersey, Law Division, Middlesex County, is final as to petitioner Bechtel because Bechtel will be subjected to jeopardy twice for the same offense unless this Court acts now.

Only this Court's review under 28 U.S.C. §1257 stands between petitioner Bechtel and the state trial which will be petitioner Bechtel's second jeopardy. It is true, of course, that, if petitioner Bechtel is subjected to a second jeopardy and convicted, its claim of right under the Constitution of the United States will be reviewed by a higher New Jersey court on a direct appeal from conviction. New Jersey Rule 2:3-2. The possibility of such a review, however, does not alter the final nature of the order of the

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[2] Under New Jersey practice the denial of petitioner Bechtel's motion to dismiss is reviewable only by leave of higher courts because the denial of such motions is, under New Jersey practice, interlocutory. New Jersey Rules 2:2-2 and 2:2-4. Had petitioner Bechtel's motion to dismiss been granted, that order would, under New Jersey practice, have been reviewable by the Appellate Division of the Superior Court of New Jersey without leave. New Jersey Rule 2:3-1.

Superior Court. Such a review will not undo the violation of petitioner Bechtel's rights, which is the second jeopardy itself. The effectiveness of a review is, therefore, illusory. Further, if a second jeopardy resulted in an acquittal for petitioner Bechtel, no review of the propriety of the second jeopardy would be available to your petitioner.

This Court has seen through such illusions in the past. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949); *Mercantile National Bank* v. *Langdeau*, 371 U. S. 555 (1963); *Local No. 438* v. *Curry*, 371 U. S. 542 (1963); *Hudson Distributors* v. *Eli Lilly & Co.*, 377 U. S. 386 (1964). In this proceeding, the injury to petitioner Bechtel (being subjected to a second jeopardy) is irreparable. A conviction and fine can be reversed on appeal, but the jeopardy, once faced, cannot be undone. The federal constitutional claim of double jeopardy is entirely separate from a trial of the indictment and promises to terminate the proceeding without such a trial if petitioner Bechtel's position is upheld by this Court. Review of the order of the Superior Court of New Jersey, Law Division, Middlesex County is a necessity now, for an acquittal of Bechtel will bar any future review however inadequate. See, *California* v. *Stewart*, 384 U. S. 436, 498, n. 71, in which this Court held the finality requirement of 28 U.S.C. §1257 satisfied where further state court proceedings could bar review of a petitioner's federal constitutional claims.

Petitioner Bechtel, therefore, meets any standard one can posit for allowing review at this time. See Dyk, *Supreme Court Review of Interlocutory State-Court Decisions: "The Twilight Zone of Finality"*, 19 Stan. L. Rev. 907, 914-917 (1967).

The jurisdictional aspects of this petition, by themselves, merit a full review by this Court. It need hardly be stated that the scope of this Court's jurisdiction is of

prime importance to this Court, to the judiciary of each state of the Union, and to every potential petitioner to this Court. Any lack of clarity in the standards for determining the finality of state court actions has the continuing effect of depriving potential petitioners of federal constitutional rights which state judiciaries do not see fit to review.

2. *Bartkus v. Illinois*, 359 U. S. 121 (1959), must be re-examined to resolve serious doubts regarding the continuing viability of the doctrines enunciated therein.

The statement of the case shows that Bechtel has been charged with violations of two statutes, one federal and one state, through one set of acts. The alleged violation upon which both prosecutions are based is of N.J.S. 2A: 93-6 which generally proscribes bribery of public officials. The federal statute, 18 U.S.C. §1952, is one of a series of recent federal statutes which punish violations of state law when interstate facilities are used.

The violation of state law was the central issue in the federal prosecution and, of course, will be the central issue if the state prosecution proceeds to trial. The result is two prosecutions by two sovereigns for one violation of one sovereign's criminal law.

The Superior Court of New Jersey, Law Division, Middlesex County, relied on this Court's decision in *Bartkus* v. *Illinois*, 359 U. S. 121 (1959). The erosion of support for the *Bartkus* decision has now been well established in a series of this Court's subsequent decisions. See e.g.:

Murphy v. *Waterfront Commission,* 378 U. S. 52 (1964); *Benton* v. *Maryland,* 395 U. S. 784 (1969); *Waller* v. *Florida,* 397 U. S. 387 (1970); *Price* v. *Georgia,* 398 U. S. 323 (1970).

Re-examination of the *Bartkus* rule is underway in at least two states. The Ohio Court of Appeals does not believe *Bartkus* to be a binding precedent. *State* v. *Fletcher,* 22 Ohio App. 2d 83, 259 N. E. 2d 146 (1970). The Pennsylvania Supreme Court is currently considering the issue. *Commonwealth* v. *Mills,* No. 321, January Term 1971. That the scope of protection of the double jeopardy prohibition continues to be of great concern is evidenced by three recent major treatments of the subject. See, Miller, *Double Jeopardy and the Federal System* (Univ. of Chicago Press, 1968); Sigler, *Double Jeopardy* (Cornell University Press, 1969); Friedland, *Double Jeopardy* (Clarendon Press, Oxford, 1969). A re-examination of *Bartkus* by this Court is now well warranted.

3. If *Bartkus v. Illinois,* 359 U. S. 121 (1959), is not to be re-examined, a clarification of the identity of interests of dual sovereigns is necessary to avoid frictions between prosecuting jurisdictions and to guide state judiciaries and federal trial courts in the application of the dual sovereignty doctrine.

As indicated earlier, the federal government's recent statutory enactments in the area of interstate violations of state criminal statutes raise special problems if the *Bartkus* decision continues to be binding precedent. In such factual situations, the interests of the two sovereigns become indistinguishable. No longer does each sovereign

protect its own special interests based on its own separate statutes. Instead, one sovereign has obtained jurisdiction to punish individuals who violate the special interests of another sovereign.[3] See, *United States* v. *Nardello,* 393 U. S. 286, 290-293 (1969); *Perez* v. *United States,* 39 U. S. L. W. 4484 (1971).

The *Bartkus* opinion recognized, 359 U. S. at 130, that an identity of interests between the two sovereigns destroys the justification for successive prosecutions. As early as *Houston* v. *Moore,* 18 U. S. (5 Wheat.) 1 (1820), this Court imposed that limitation on the dual sovereignty concept. Whatever the historical background of that concept, see, e.g., Newman, *Double Jeopardy and the Problem of Successive Prosecutions: A Suggested Solution,* 34 S. Calif. L. Rev. 252, 255-264 (1961), the new direction of federal legislation requires its further clarification by this Court.

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[3] Federal prosecutors may now indict individuals for loan sharking in violation of state law (18 U.S.C. §891 *et seq.*); for sales of firearms in violation of state law (18 U.S.C. §922(b)(2)); for conspiracy to obstruct state or local law enforcement (18 U.S.C. §1511); for gambling businesses in violation of state law (18 U.S.C. §1955); and for using income derived in violation of state law (18 U.S.C. §§1961, 1962). Each of the above-mentioned statutes and 18 U.S.C. §1952 which is directly involved here were enacted after this Court's decision in *Bartkus.*

CONCLUSION

For these reasons a writ of certiorari should issue to review the order of December 8, 1969, of the Superior Court of New Jersey, Law Division, Middlesex County.

Respectfully submitted,

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APPENDIX A

Oral Decision of Gerofsky, A. J. S. C. (October 31, 1969)

NEW JERSEY SUPERIOR COURT
MIDDLESEX COUNTY—LAW DIVISION
(CRIMINAL)
Nos. 69-187, 188, 190

THE STATE OF NEW JERSEY,

vs.

WALTER ZIRPOLO, ROBERT E. JACKS, COLONIAL PIPELINE COMPANY, KARL T. FELDMAN, BEN D. LEUTY, ROWLAND TOMPKINS CORPORATION, BECHTEL CORPORATION, GATES CONSTRUCTION CORPORATION, GATES EQUIPMENT CORPORATION,

Defendants.

Middlesex County Court House
New Brunswick, New Jersey
October 31, 1969

Before:

HONORABLE LEON GEROFSKY, A. J. S. C.

Appearances:

EDWARD J. DOLAN, Prosecutor
By J. NORRIS HARDING, Assistant Prosecutor
For the State.

TOOLAN, ROMOND & BURGESS, ESQS.
By ARTHUR W. BURGESS, ESQ.,
For Defendant Jacks.

Oral Decision of Gerofsky, A. J. S. C.
(October 31, 1969)

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By WARREN W. WILENTZ, ESQ.,
For Defendant Colonial Pipeline.

PAUL, WEISS, GOLDBERG, RIFKIND,
WHARTON & GARRISON
By SIMON H. RIFKIND, ESQ.,
For Defendant Leuty.

PINDAR, MCELROY, CONNELL, FOLEY &
GEISER, ESQS.
By ADRIAN M. FOLEY, JR., ESQ.,
For Defendant Feldman.

SHANLEY & FISHER, ESQS.
By THOMAS F. CAMPION, ESQ.,
For Defendant Bechtel Corporation.

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(2)* The Court: Gentlemen, I have listened to all the argument here, after having devoted much time during the summer and since then to the briefs filed in this matter, and I am ready to call it. As I say, all of you rely upon your brief, and I have read them, studied them, familiarized myself with all of the authorities recited therein.

The defendants here, other than the defendant, Zirpolo, have moved this Court for an order dismissing the in-

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* All figures in parentheses indicate the number of each new page of the stenographic transcript.

Oral Decision of Gerofsky, A. J. S. C.
(October 31, 1969)

dictments against them on the ground that trial in this Court would place them twice in jeopardy, and on the additional ground, raised by defendant, Leuty, that the State is collaterally estopped from prosecuting them. Today Leuty suggests an additional ground, a further ground that the Court should exercise supervisory power to bring to a halt this prosecution. That, though not specifically briefed, is summed up by my observation that it constitutes nothing more than that this Court should let its heart rule its head.

The defendants were first indicted in the United States District Court of New Jersey. They were charged, in many counts, with conspiring to violate and violating 18 U.S.C. code section 1952 by using or causing others to use facilities in interstate commerce to promote, manage, establish, carry on and facilitate unlawful activity, to (3) wit, violations of New Jersey's bribery statute, N.J.S. 2A:93-6. A trial was held and various judgments of convictions and acquittal were entered on jury verdicts. The judgments of conviction are presently under appeal.

The Middlesex County Grand Jury subsequently indicted the same defendants. In all essential respects, save the loss of some counts through passage of time, the State indictments charge the defendants with unlawful conduct arising out of the same facts. The only substantive difference is that the State indictments do not charge that the conduct of the defendants was interstate.

The defendant, Jacks, has also moved for dismissal of indictments in which he alone is charged with extortion and misconduct in public office. He has not submitted

a brief and is apparently relying on the briefs of other counsel. I assume that his position, for the purposes of this motion, is similar to that of the other defendants; however, any argument offered by the other defendants regarding the similarity of identity of offenses charged in the State and Federal indictments cannot serve any useful purpose here.

I turn to the argument that the indictments must be dismissed on the ground that trial in this Court would place them twice in jeopardy. The controlling authority on the issue of consecutive federal and state prosecutions (4) as placing a defendant twice in jeopardy, on both federal and state constitutional levels, is *State* v. *Cooper,* 54 New Jersey 330 (1969). In that case the New Jersey Supreme Court upheld prosecution of the defendant under both federal and state weapons statutes which were almost identical. In reaffirming the "dual sovereignty" theory announced in *Bartkus* v. *Illinois,* 359 U. S. 121, and other citations, the Court pointed out the ideological differences between the federal government and some of the states in determining the gravity of various criminal offenses and the frustration to national or state law enforcement policy which could result from a prohibition of a second trial by the other sovereign. It concluded that a subsequent prosecution by the state did not violate the U. S. Constitution, nor could the Court find a violation of the N. J. Constitutional provision for the same reasons.

Cooper would appear to be conclusive on the issue before this Court since a "dual sovereignty" rationale cer-

tainly would apply to a federal interest in the stream of interstate commerce and a separate and distinct state interest in punishing law-breakers within its borders.

But defendants mount several attacks on *Cooper*.

First, defendants seem to imply that the New Jersey Supreme Court would not have decided *Cooper* the way it did had it done some additional research, and they urge this (5) Court to correct this oversight and reject the "dual sovereignty" theory since it has been "eroded". To sustain this contention, defendants cite several United States Supreme Court cases in which what they conveniently call the "dual sovereignty" theory was "rejected". *Rea* v. *U. S.*, 350 U. S. 214 (1956); *Elkins* v. *U. S.*, 364 U. S. 206 (1960) and *Murphy* v. *Waterfront Commission of New York Harbor*, 378 U. S. 52 (1964). But these decisions represent only the application of the doctrine as it applies to the kind of evidence used in consecutive state-federal or federal-state prosecutions, not, as defendants would have it used here, to prevent a subsequent prosecution altogether.

Defendants next claim that, even if *Cooper* was correctly decided, it is distinguishable in that the federal statute there was designed to protect a matter of special federal concern, that is, the security of the national banking system and makes no reference to state law, while the state statute was designed to protect a distinctly different state concern, that is, protection of its citizens from dangerous weapons. However, the federal statute under which defendants were indicted here also protects a distinctly federal interest, that is, freeing interstate commerce from devices used to violate a law, the fact that

the law violated was a state law is of secondary importance, whereas the state law protects (6) citizens from the corruption of their government through bribery of public servants.

Nor does the fact that the *Cooper* court was concerned with an application for post-conviction relief make its decision any less binding on this Court since it cannot be presumed, despite defendants' suggestions, that the New Jersey Supreme Court would have applied two different standards on such an important constitutional issue in the absence of some clear indication to the contrary.

Having demonstrated why the dual sovereignty doctrine should no longer be adhered to, defendants go on to suggest that there is ample precedent for a state court's rejection of the United States Supreme Court decisions before they are expressly overruled by the highest court of the land. To soothe any apprehension this Court might have in taking so bold a step, defendants cite several state court decisions which had anticipated later Supreme Court rulings, and specifically, an opinion by an Ohio trial court in *State* v. *Fletcher,* 15 M. 211, 240 N.E. 2d 905 (1958), which found double jeopardy in a situation similar to the case at bar. Defendants fail to note, however, as did the court in *Cooper, supra,* 338, that:

> "* * * As stated in *Bartkus, supra,* of the twenty-eight states which have considered the validity of successive state and federal (7) prosecutions as against a challenge of violation of either a state constitutional double-jeopardy provision or a common-law evidentiary rule of *autrefois acquit* and

autrefois convict, twenty-seven have refused to rule that the second prosecution was or would be barred." Citations.

Suffice it to say that even if this Court agreed with defendants' argument for the rejection of the "dual sovereignty" theory, it would hardly be propitious to fly in the face of a recent decision squarely on point by the highest court of this state on such dubious precedent.

Putting aside all considerations of double jeopardy, defendant Leuty next contends that the state prosecution here is barred by collateral estoppel, a somewhat nebulous offshoot of *res judicata* used in many criminal cases as a supplement to double jeopardy.

Even assuming, however, that the two prosecutions here present sufficient identity of issues and that no additional evidence could be pressed at the subsequent state prosecution, application of the doctrine of collateral estoppel still requires, as Leuty concedes, at least an identity of interests, if not a strict identity of parties. And if this Court accepts the "dual sovereignty" theory, as it is compelled to do by *Cooper, supra,* it (8) becomes immediately apparent that not only are the parties different, but the interests of each are not identical, the state's interest, therefore not being fully protected in the prior federal prosecution, thus precluding the operation of the collateral estoppel rationale.

State v. *Cormier,* 46 N. J. 494, 505 (1966), on which Leuty relies, cites strict identity of parties as a prerequisite to the operation of the doctrine, and indeed that case involved two successive prosecutions by the same sover-

eign, the state. Nor do the other cases which Leuty cites, all civil, support an extension of the doctrine to the situation *sub judice,* where two different sovereigns seek to vindicate separate policies underlying their separate penal laws. Rather, the Court looks to the more direct authority of *Ferina* v. *U. S.,* 340 F. 2d 837 (8th Cir. 1965). There, the Court expressly declined to use either double jeopardy, or *res judicata* to bar a federal prosecution for obstructing justice following a state acquittal for a felonious assault, even though both charges arose out of the same activity, since the offenses had been committed against two different sovereigns.

In conclusion, this Court is convinced that the result of the granting of defendants' motion at this time would be a blow to *stare decisis* and the entire state-federal dichotomous system of criminal justice which this (9) Court has neither the authority nor the inclination to strike.

The Court, finding no merit in any of defendants' arguments, hereby denies all motions to quash the indictments.

Counsel will submit an appropriate order.

APPENDIX B

Order of Law Division of Superior Court

(Filed—December 8, 1969)

NEW JERSEY SUPERIOR COURT
MIDDLESEX COUNTY—LAW DIVISION
(CRIMINAL)
Nos. 69-187, 188, 190

THE STATE OF NEW JERSEY,

vs.

WALTER ZIRPOLO, ROBERT E. JACKS, COLONIAL PIPELINE COMPANY, KARL T. FELDMAN, BEN D. LEUTY, ROWLAND TOMPKINS CORPORATION, BECHTEL CORPORATION, GATES CONSTRUCTION CORPORATION, GATES EQUIPMENT CORPORATION,

Defendants.

This matter having been opened to the Court by various counsel representing all of the afore-mentioned defendants except Walter Zirpolo, and the State having been represented by Edward J. Dolan, Prosecutor of Middlesex County (J. Norris Harding, Assistant Prosecutor, appearing), and the Court having had an opportunity to consider the briefs and affidavits submitted as well as the oral arguments presented;

It is, on this eighth day of December, 1969, ORDERED and ADJUDGED that the motions made by respective coun-

sel for all the defendants except defendant Walter Zirpolo, for dismissal of the above indictments, based upon double jeopardy and/or collateral estoppel, be and the same are hereby dismissed for the reasons fully stated in the court's oral opinion delivered in open court on October 31, 1969, as by the record will more fully appear.

LEON GEROFSKY, A. J. S. C.

I hereby consent to the form of the within Order.

WILENTZ, GOLDMAN & SPITZER
Attorneys for Colonial Pipeline Company
By WARREN W. WILENTZ

TOOLAN, ROMOND & BURGESS
Attorneys for Robert E. Jacks
By JOHN E. TOOLAN

SHANLEY & FISHER
Attorneys for Bechtel Corporation
By THOMAS CAMPION

BROWER, BRILL & GANGEL
Attorneys for Rowland Tompkins Corporation
By JOSEPH E. BRILL

PAUL, WEISS, GOLDBERG, RIFKIND, WHARTON & GARRISON
Attorneys for Ben D. Leuty
By SIMON H. RIFKIND

PINDAR, MCELROY, CONNELL, FOLEY & GEISER
Attorneys for Karl T. Feldman
By ADRIAN FOLEY

VAN RIPER, BELMONT & VILLANUEVA
Attorneys for Gates Equipment Corp. and Gates Construction Corp.
By WALTER VAN RIPER